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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

LOOKSMART GROUP, INC.,

Plaintiff,

vs.

MICROSOFT CORPORATION,

Defendant.

Case No. 3:17-cv-4709-JST

**STIPULATION AND ~~PROPOSED~~
ORDER GRANTING THE PARTIES'
REQUEST TO AMEND CONTENTIONS
PURSUANT TO PATENT L.R. 3-6**

DEMAND FOR JURY TRIAL

Pursuant to Local Rules 7-1(a)(5) and 7-12, and Patent Local Rule 3-6, Plaintiff Looksmart Group, Inc. ("Looksmart") and Defendant Microsoft Corporation ("Microsoft") hereby agree and stipulate as follows:

WHEREAS, LookSmart served its Patent L.R. 3-1 Infringement Contentions on February 14, 2018 and Microsoft served its Patent L.R. 3-3 Invalidity Contentions on April 2, 2018 pursuant to the Court's Scheduling Order (ECF No. 45);

WHEREAS, on May 4, 2018, LookSmart notified Microsoft of its intent to seek the Court's leave to amend its Infringement Contentions and concurrently provided Microsoft with a copy of its proposed Amended Infringement Contentions and a draft motion for leave to amend;

1 WHEREAS, Microsoft does not oppose LookSmart's request to amend its Infringement
2 Contentions in the manner represented in LookSmart's May 4, 2018 correspondence, and
3 LookSmart does not oppose Microsoft's request to amend its Invalidity Contentions so long as
4 Microsoft does so on or before June 1, 2018 and its amendments are commensurate in scope with
5 LookSmart's amendments;

6 WHEREAS, LookSmart respectfully submits that good cause exists to amend its
7 Infringement Contentions pursuant to Patent L.R. 3-6 because:

- 8 (a) LookSmart's amended contentions rely on information ascertained from Microsoft's
9 non-public, confidential and proprietary information, which was not known to
10 Looksmart prior to Microsoft's production, and LookSmart diligently reviewed such
11 information;
- 12 (b) LookSmart's proposed amendments will not unduly prejudice Microsoft due to the
13 relatively early stage of the case and because they do not assert any new patent
14 claims;
- 15 (c) LookSmart acted diligently in seeking this amendment since none of these above
16 bases for amendment were previously available to LookSmart outside the confidential
17 discovery and disclosure mechanisms of this case;
- 18 (d) LookSmart agrees that in its original theory, it found no evidence that a "dynamic
19 rank" value was stored in the "merged indices" for the Accused Products, though it
20 has requested additional information to determine whether a different rank value (e.g.,
21 "sort rank") is;
- 22 (e) However, LookSmart contends in its amended infringement contentions that the
23 "dynamic rank" value is stored in a "query cache" used with the accused product, and
24 that this is LookSmart's primary infringement theory subject to its remaining
25 questions on the rank values stored in the "merged indices."

26 WHEREAS, Microsoft respectfully submits that good cause exists to amend its Invalidity
27 Contentions pursuant to Patent L.R. 3-6 because:
28

- 1 (a) Microsoft contends that the change in the infringement theories between LookSmart's
2 initial Patent L.R. infringement charts and its amended "query caching" theory
3 present LookSmart's application of certain claim terms in a new light, which
4 Microsoft did not appreciate when Microsoft prepared its responsive Patent L.R. 3-3
5 invalidity contentions;
- 6 (b) In view of LookSmart's amended infringement contentions, Microsoft is performing
7 an additional search for prior art to address these changes provided on May 4, 2018;
- 8 (c) Microsoft's responsive charts will be diligently served less than 30 days after
9 Looksmart first provided its proposed its amended Patent L.R. infringement charts;
- 10 (d) Looksmart will not be unduly prejudiced by supplementation of Microsoft's Patent
11 L.R. invalidity contentions because it is relatively early in the case, and the existing
12 Patent L.R.'s already reflect a response to defend against a claim of infringement.

13 WHEREAS, LookSmart and Microsoft have agreed that, to avoid burdening the Court,
14 the parties will stipulate to allow amendments to their respective Infringement and Invalidity
15 Contentions, subject to the Court's approval.

16 IT IS HEREBY STIPULATED AND AGREED, by and between LookSmart and
17 Microsoft, subject to the Court's approval, that:

18 (a) LookSmart is hereby given leave to amend its Patent L.R. 3-1 infringement
19 contentions in the manner set forth in LookSmart's May 4, 2018 correspondence; and

20 (b) Microsoft is hereby given leave to amend its Patent L.R. 3-3 invalidity contentions on
21 or before June 1, 2018 in a manner that is commensurate in scope with LookSmart's
22 amendments.

1 Dated: May 15, 2018

2 Respectfully submitted,

3 /s/ Eric J. Enger

/s/ Jason W. Wolff (by permission)

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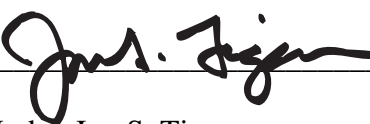
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~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED that the Parties' request to amend their contentions is GRANTED. LookSmart is hereby ordered to serve a copy of its Amended Infringement Contentions on counsel for Microsoft within two days of this Order. Microsoft is hereby ordered to serve a copy of its Amended Invalidity Contentions on counsel for LookSmart on or before June 1, 2018.

Dated: May 17, 2018

By: 
Judge Jon S. Tigar
UNITED STATES DISTRICT COURT